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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison
Company (U338E) for Approval of the
Results of Its 2013 Local Capacity
Requirements Request for Offers for the
Moorpark Sub-Area

Application 14-11-016
(Filed November 26, 2014)

OPENING BRIEF OF THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE

PUBLIC VERSION

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[end confidential]

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1 **SUMMARY OF RECOMMENDATIONS**

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3 **RECOMMENDATION 1:** The California Environmental Justice Alliance (“CEJA”) urges the
4 Commission to find that Southern California Edison (“SCE”) did not comply with the procurement
authorized by Decision D.13-02-015. In particular, CEJA requests that the Commission

5 - find that SCE’s procurement plan for Track I procurement does not meet the requirements
6 of D.13-02-015, and

7 - order SCE to submit a revised procurement plan

8 - find that SCE’s RFO and procurement decision does not meet the requirements of D.13-02-
9 015, and

10 - order SCE, upon approval of a procurement plan that provides for consideration of
11 environmental justice, to issue a new RFO

12 **RECOMMENDATION 2:** CEJA recommends that the Commission find that SCE’s procurement
13 decisions to award contracts to NRG Oxnard and the Ellwood refurbishment were not reasonable.

14 **RECOMMENDATION 3:** Based on the above findings and orders, CEJA requests that the
Commission deny the contracts for NRG’s “Puente Power Plant” and Ellwood refurbishment.

15 **RECOMMENDATION 4:** In the alternative, were the Commission not inclined to deny the
16 contracts for the NRG Oxnard plant, CEJA recommends the Commission stay this proceeding
pending completion of the application for certification before the California Energy Commission.

17 **RECOMMENDATION 5:** CEJA requests that the Commission find that SCE’s procurement
18 decision to award a contract for NRG’s Ellwood refurbishment is not authorized.
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8 **OPENING BRIEF OF THE CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE**
9 **PUBLIC VERSION**

10 **I. INTRODUCTION**

11 The California Environmental Justice Alliance (“CEJA”)¹ respectfully submits its
12 Opening Brief in the above-captioned proceeding. This brief is timely filed pursuant to the
13 schedule set out in the Assigned Commissioner’s Ruling and Scoping Memo, issued March 13,
14 2015.

15 **II. BACKGROUND**

16 In D.13-02-014, the Commission authorized Southern California Edison (“SCE”) to
17 procure between 215 and 290 Megawatts (“MW”) of electrical capacity in the Moorpark sub-
18 area to meet long-term local capacity requirements by 2021, largely due to the expected
19 retirement of once-through-cooling (“OTC”) generation facilities. The Commission required
20 that procured resources “ensure adequate available electrical capacity . . . and [] the safety and
21 reliability of the local electrical grid.”² The “critical contingency,” or series of occurrences for
22 which the Commission found a need for new generation in the subarea, is the loss of three power
23 lines along the Moorpark – Pardee corridor.³ Generation anywhere in the Moorpark sub-area
24 will meet the LCR need caused by this contingency.

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¹ On April 30, 2015, CAUSE, an intervenor in this proceeding, became a member organization of CEJA. CAUSE
27 will not, for that reason, be submitting briefs independent of CEJA, as its voice will be heard through CEJA’s
28 briefing.

² D.13-02-014, at 2.

³ See Exhibit SCE-1 at 6.

1 At issue in this proceeding is whether this Commission should approve contracts
2 proposed by SCE to meet the need in the Moorpark sub-area, including contracts for a new
3 power plant in the environmental justice community of Oxnard, and for a refurbishment of an
4 existing plant in Goleta that does not fill any identified need.

5 **A. The City of Oxnard is an Environmental Justice Community Within the**
6 **Moorpark Subarea.**

7 The Moorpark sub-area of SCE's Big Creek/Ventura service territory spans a portion of
8 the Central Coast including the Goleta substation to the north, and the Ormond Beach generating
9 substation to the south, and extends east to include the Moorpark and Santa Clara.⁴

10 The Moorpark sub-area includes affluent, predominantly white communities with few
11 pollution sources and many socioeconomic advantages. It also includes a few low-income
12 communities of color bearing disproportionate environmental burdens, known as "environmental
13 justice" or "disadvantaged" communities. Environmentally "disadvantaged communities" is
14 defined to mean vulnerable communities disproportionately affected by "environmental pollution
15 and other hazards that can lead to negative public health effects, exposure, or environmental
16 degradation" and "areas with socioeconomic vulnerability."⁵

17 The City of Oxnard, as a whole, is identified as an environmentally disadvantaged
18 community⁶ by the California Environmental Protection Agency's ("CalEPA") tool called
19 CalEnviroScreen 2.0.⁷ Based on a quantitative analysis of multiple pollution sources and
20 stressors used to rank California's census tracts,⁸ the City of Oxnard ranks within the top 20%

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23 ⁴ See *id.* 5-6.

24 ⁵ Cal. Senate Bill 43, Ch. 413, Cal. Pub. Util. Code § 2833 (1)(A) (emphasis added)

25 ⁶ Exh. CEJA-1 (Vanderwarker Testimony) at 6.

26 ⁷ CalEnviroScreen is the tool on which California relies to identify communities where environmental injustice is
27 the greatest. Ex. CEJA-1 (Vanderwarker Testimony) at 5. This Commission also relies on CalEnviroScreen as a
28 tool to identify disadvantaged communities. D.15-01-051 at 53-54. The tool "includes two components
representing pollution burden – exposures and environmental effects – and two components representing population
characteristics – sensitive populations (e.g., in terms of health status and age) and socioeconomic factors." *Id.*, at 4
(citing CalEnviroScreen Final Report). CalEnviroScreen 2.0 uses 19 statewide indicators to characterize both
pollution burden and population characteristics, as illustrated in the following table. The tool's scientific
methodology examines how many indicators are present within each census tract using a scoring system "to weigh[]
and sum each set of indicators within pollution burden and population characteristics components." *Id.* at 5 "After
the components are scored, the scores are combined to calculate the overall CalEnviroScreen Score." *Id.*

⁸ Ex. CEJA-1 at 4-6.

1 most environmentally burdened cities in the State.⁹ No other community or city within the
2 Moorpark Subarea falls within the top 80th percentile.¹⁰

3 Indeed, Oxnard’s communities are heavily burdened by poverty, pollution, and language
4 and educational barriers.¹¹ Oxnard has borne the burden of hosting two large OTC plants on
5 “industrial sites” on its beaches for decades – the Mandalay and Ormond generating facility sites.
6 The Ormond power plant was the subject of a law suit based on discharges from the generating
7 facility.¹² Oxnard’s residents are also burdened by a toxic waste superfund site,¹³ and has
8 experienced a host of health and environmental problems caused by pesticide use in the
9 agriculturally-based town¹⁴.

10 **B. SCE’s Procurement Process Failed to Consider Environmental Justice**
11 **Concerns.**

12 This Commission required SCE to procure generation in the Moorpark subarea under
13 certain, specific conditions, which SCE did not meet. First, SCE has an obligation to follow the
14 procurement authorization articulated in D.13-02-015. That decision required a procurement
15 plan and actual procurement process that articulated the applicable law. It specifically
16 highlighted a prior Commission decision stating the utility defect of failing to give meaningful
17 weight to the existing environmental burdens in communities, and failing to follow the loading
18 order. Applicable law also requires utilities actively to seek renewable generation that benefits
19 environmental justice communities. Neither SCE’s procurement plan, nor its actual procurement
20 process articulated or met these requirements. The outcome of this failure is SCE’s proposal to
21 meet the vast majority of its procurement with a new gas-fired plant in the worst possible
22 location in the Moorpark subarea.

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25 ⁹ *Id.* at 8.

26 ¹⁰ *Id.*

27 ¹¹ *Id.* at 9-10.

28 ¹² See <http://www.sec.gov/Archives/edgar/data/1013871/000101387114000003/R30.htm> (SEC filing of GenOn, NRG’s predecessor, reporting on legal settlement of 2012 lawsuit filed against it based on alleged violations of environmental laws associated with discharges of stormwater from the Oxnard Ormond Beach generating facility.)

¹³ See <http://epa.gov/Region09/waste/features/halaco/index.html>.

¹⁴ See e.g., <http://www.thenation.com/article/fields-toxic-pesticides-surround-schools-ventura-county-are-they-poisoning-students/>.

1 **C. SCE’s RFO Process Improperly Favored NRG.**

2 In addition to failing to include environmental justice considerations in its RFO process,
3 SCE was required to evaluate RFO responses based on specific criteria, including least cost/best
4 fit to meet the authorized procurement need. SCE failed to apply these criteria, instead relying
5 on other factors to award NRG contracts both to refurbish an existing peaker in Goleta and to
6 build yet another power plant in environmentally overburdened Oxnard.

7 In the LCR RFO, “SCE stated a preference for LCR resources in the Goleta service
8 area[,]” due to its assessment of loss of both Goleta-Santa Clara 230 kV transmission lines and
9 resulting “local reliability needs in the Goleta service area.”¹⁵ Indeed, SCE asserts that “[t]he *key*
10 qualitative consideration for the Moorpark sub-area was . . . [i]ncreasing [r]eliability in the
11 Goleta Sub-area.”¹⁶

12 Knowing the particular reliability vulnerability in Goleta, NRG used its market
13 dominance as the primary electricity generator in the Moorpark Subarea, including in Goleta, to
14 position itself as an indispensable bidder. NRG secured its fate in this RFO by [*begin*
15 *confidential*]

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28 ¹⁵ Ex. SCE-1C, SCE Opening Test., Cushnie at 7:10-12.

¹⁶ *Id.* Singh, at 44:8-14 (emphasis added).

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4 [end confidential].

5 For its part, SCE concedes that it *did nothing* to verify or evaluate the possibility that the
6 [begin confidential]

7
8 [end confidential] at face value, toting it along through the RFO process, and hoisting NRG's
9 Oxnard and Ellwood offers as part of their final selection.

10 Rather than a reasonable RFO result, the selected NRG contracts are more akin to a
11 sweetheart deal that compromised the integrity of the RFO process, undermined the public
12 interest in obtaining the least cost/best fit resource, and thwarted the competitive process. The
13 Commission should not now place its own imprimatur on this dubious result.

14 **III. ARGUMENT**

15 **A. SCE Did Not Comply With the Procurement Conditions Set Out In Decision** 16 **D.13-02-015.**

17 The Commission orderd conditions pursuant to which SCE is authorized to procure
18 resources. These include, first and foremost, preparing a procurement plan that articulates SCE's
19 procurement process. Among other requirements, SCE must consider the environmental justice
20 impacts of the resources it procures. As explained below, environmental justice is essentially at
21 the top of the loading order. When making procurement decisions, utilities must not only seek
22 preferred resources to meet an identified need, but actively prioritize preferred resources in
23 disadvantaged communities.¹⁷

24 The Commission also required SCE to apply these principles, stating that IOUs "need to
25 provide greater weight" to criteria regarding "disproportionate resource siting in low-income and
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28 ¹⁷ See Cal. Pub. Util. Code § 399.13(a)(7).

1 minority communities and environmental impacts.”¹⁸ Indeed, the Commission’s Procurement
2 Policy Manual states explicitly that IOUs “shall consider” environmental justice issues in
3 evaluating bids from an RFO.¹⁹

4 **1. SCE’s Procurement Plan, Which was Never Subject to Public Comment or**
5 **Commission Scrutiny, Failed to Require the Conditions set out in D.13-**
6 **02-015.**

7 SCE’s procurement plan failed to require that SCE give preference to renewable energy
8 projects that would provide benefits to disadvantaged communities in the Moorpark sub-area. It
9 also failed to articulate any criteria to weigh the fact that the Oxnard community already bears
10 disproportionate burdens of siting and environmental justice impacts, and does not have any
11 guidance on SCE implementing the mandate that it consider environmental justice issues in
12 evaluating bids.

13 The procurement plan was only subject to review and approval by Energy Division, and
14 not by the public, parties to the 2012 LTPP proceeding, or the Commission itself.²⁰ This
15 proceeding is the first opportunity CEJA has had to object to the deficiencies in SCE’s plan to
16 procure for Moorpark sub-area and, as the Commission noted with respect to the SDG&E Track
17 4 procurement plan, parties may have “due process” rights to challenge not only procurement
18 decisions, but also procurement “methods” proposed by the utilities.²¹ The Commission
19 observed that the parties would have the opportunity to challenge not only the results of
20 procurement, but also the “methods”, or plans, when a utility sought procurement approval by
21 means of an application to the Commission.²²

22 SCE submitted its approved and implemented plan into the record for this proceeding.²³
23 As SCE’s procurement plan correctly observes that D.13-02-015 requires, “[f]irst and foremost, .

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25 ¹⁸ D.07-12-052, Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s,
and San Diego Gas & Electric Company’s Long-Term Procurement Plans (Dec. 21, 2007), p. 157.

26 ¹⁹ California Public Utilities Commission AB 57, AB 380, and SB 1078 Procurement Policy Manual (June 2010), p.
4-8; available at <http://docs.cpuc.ca.gov/efile/RULINGS/118826.pdf>. This manual was cited as authority in the
Track III decision, D.14-02-040, at 4-5.

27 ²⁰ SCE, Colin Cushnie, Hr’g Tr. Vol. 2, at 254:6 – 255:28.

28 ²¹ See D.14-08-008, Decision Denying Petitions for Modification (Aug. 14, 2014) at 11.

²² D.14-08-008 at 11.

²³ Exhibit SCE-10.

1 . . [that] RFOs . . .meet all previous CPUC requirements (including D.07-12-052)”.²⁴ D.07-12-
2 052 mandates that IOUs “provide greater weight” to criteria regarding “disproportionate resource
3 siting in low-income and minority communities and environmental impacts.”²⁵ Yet, SCE’s is
4 silent with regard to disproportionate resource siting.²⁶

5 The measures included in the procurement plan to address the Loading Order also fail to
6 meet the requirements of D.13-02-015 and the “all previous CPUC requirements.” Specifically,
7 the procurement plan fails to articulate any actions to “give preference to renewable energy
8 projects that provide environmental and economic benefits to communities afflicted with poverty
9 or high unemployment, or that suffer from high emission levels of toxic air contaminants, criteria
10 air pollutants, and greenhouse gases”, as required by the Public Utilities Code.²⁷ The plan is
11 entirely devoid of methodology to identify such communities in the Moorpark sub-area. It
12 contains no measures, either qualitative or quantitative, to prioritize renewable energy projects in
13 such communities.²⁸

14 2. SCE Failed to Consider Environmental Justice

15 Not only did the procurement plan fail to meet the requirements of D.13-02-015, the
16 procurement process itself failed to comport with the decision’s requirements. It did not give
17 any weight at all, let alone “greater” weight, to the fact that Oxnard is an environmental justice
18 community. Further, SCE did not express any preference for preferred resources that would
19 have a benefit to the Oxnard communities.

20 a. **Oxnard falls within the top 10% most environmentally 21 burdened communities in California.**

22 In sharp contrast with the rest of the Moorpark sub-area, as a whole,²⁹ Oxnard has
23 multiple census tracks within the top 10% most environmentally burdened communities
24

25 ²⁴ *Id.* at 32.

26 ²⁵ D.07-12-052, Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s,
and San Diego Gas & Electric Company’s Long-Term Procurement Plans (Dec. 21, 2007), p. 157.

27 ²⁶ See Exhibit SCE-10.

28 ²⁷ Cal. Pub. Util. Code § 399.13(a)(7).

29 ²⁸ See Exhibit SCE-10.

²⁹ CEJA Exh. 001 at 8.

1 in the state, including one tract in the top 5%.³⁰ The profile for these environmentally
2 burdened communities in Oxnard shows that 85% of the population is Latino, 29.03%
3 lives in linguistic isolation, 56.44 % percent lives below two times the federal poverty
4 level, and 46.5% of those who are over 25 years of age have less than a high school
5 education.³¹

6 In addition to the number of individuals who live in close proximity to NRG's new
7 proposed gas fired power plant, there are thousands of farm workers who *work* in even *closer*
8 proximity to the site. The City of Oxnard is largely an agricultural city -- agriculture is the
9 largest industry job sector.³² According to the U.S. Census Bureau, over 15,000 Oxnard
10 residents are employed in the agricultural industry, with well over 90% in non-management,
11 non-sales jobs.³³ The agricultural fields and their workers in closest proximity to the new
12 proposed gas fired plant are less than half a mile away. Between 1,000 and over 3,000 people
13 labor in the agricultural fields surrounding the proposed gas fired power plant.³⁴

14 Again, Oxnard has for decades carried the burden of housing three power plants, two of
15 which are large OTC plants, which have powered the Moorpark subarea. No other community in
16 within the subarea has borne similar burdens of industrial blight, air pollution, and the
17 detrimental cumulative effects of such facilities. Oxnard residents have been assaulted with
18 health and environmental consequences of a toxic waste facility listed as a superfund site,³⁵
19 egregious pesticide use,³⁶ and a legal challenge to the Ormond power plant's contaminating
20 discharges.³⁷ With over 70% of Latino residents, Oxnard has the highest percentage of
21 minorities in the entire Moorpark subarea, and it is largely low-income.

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24 ³⁰ *Id.*

³¹ CEJA Exh. 001 at. 9.

25 ³² *Id.* at 10.

³³ *Id.*

26 ³⁴ *Id.* at 10-11.

³⁵ See <http://epa.gov/Region09/waste/features/halaco/index.html>.

27 ³⁶ See e.g., <http://www.thenation.com/article/fields-toxic-pesticides-surround-schools-ventura-county-are-they-poisoning-students/>.

28 ³⁷ See <http://www.sec.gov/Archives/edgar/data/1013871/000101387114000003/R30.htm> (SEC filing of GenOn, NRG's predecessor, reporting on legal settlement of 2012 lawsuit filed against it based on alleged violations of environmental laws associated with discharges of stormwater from the Oxnard Ormond Beach generating facility.)

1 The disproportionate siting of contaminating facilities in communities of color is known
2 as environmental racism.³⁸ The disproportionate impact of environmental burdens on minority
3 communities, such as Oxnard, continues to be neglected, even though State laws and policies,
4 including the Commission's, require that they be meaningfully considered. Instead, Latino and
5 other minority communities continue to have contaminating facilities imposed on them, while
6 surrounding, White-majority communities reap the benefits of the facilities without suffering the
7 consequences. As residents of Oxnard largely expressed at the July 15, 2015 public participation
8 hearing in this proceeding, however, this racial injustice is not lost on them.

9 **b. SCE's Procurement Decision did not Give Greater Weight to**
10 **the Fact that Oxnard is an Environmental Justice Community**

11 D.13-02-015 provided SCE with procurement flexibility, so long as it followed the rules
12 already established for procurement, including specifically D.07-12-052, which instructs the
13 utilities to include consideration of environmental justice impacts.³⁹ D.07-12-052 noted that the
14 utilities should give greater weight to the disproportionate resource sites in low income and
15 minority communities.⁴⁰ The evidence establishes that SCE selected the NRG Oxnard gas fired
16 power plant without any consideration of environmental justice. First, there is nothing in the
17 record showing that either SCE or NRG consulted evidence about the demographics of the
18 communities closest to the proposed gas-fired power plant. The data shows the communities
19 close to the proposed plant are subjected to significant cumulative pollution impacts and health
20 impacts from pollution, as well as socioeconomic conditions such as very low income and
21 educational attainment.⁴¹

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25 ³⁸ <http://www.epa.gov/region7/ej/definitions.htm> ("Disproportionate Impact (of minority populations): Refers to
26 communities of low income and/ or color and in the presence of high-risk environmental hazards. Those
27 communities in the presence of environmental and human health hazards are more at risk of developing chronic
28 health problems or experiencing environmental racism due to their surroundings than other parts of the country.").

³⁹ D.07-12-052, p.157. In D.13-02-015, the Commission specified that "[n]othing in this decision exempts SCE from
previously adopted Commission rules on RFOs in D.07-12-052 and elsewhere."

⁴⁰ D.07-12-052, p.157.

⁴¹ Exhibit CEJA-001 pp. 7-10.

1 SCE witness Singh testified that, to his recollection, environmental justice was never
2 discussed with regard to procurement in the Moorpark sub-area.⁴² This is information SCE
3 should have considered, but failed to weigh in its assessment of bids.

4 **3. SCE's Procurement Decision did not seek to Prioritize Renewable Energy**
5 **Projects in Environmental Justice Communities**

6 Despite the procurement mandate that SCE “give preference to renewable energy projects
7 that provide environmental and economic benefits”⁴³, SCE did not indicate any preference for
8 renewable energy projects in Oxnard. Indeed, while SCE indicated a preference for resources in
9 Goleta, it never indicated any preference for projects in Oxnard. Specifically, SCE witness
10 Bryson testified that Edison emphasized the procurement of preferred resources at its bidder
11 conference, but never emphasized the need for preferred resources in Oxnard.⁴⁴ He testified that
12 SCE “emphasized [the] . . . desire for preferred resources in the Moorpark area and then more
13 specifically a preference for resources in Goleta.”⁴⁵ He unequivocally testified that “Edison
14 never communicated a need or preference for preferred resources to benefit Oxnard
15 particularly.”⁴⁶ SCE witness Singh acknowledged that SCE gave “qualitative preference” to
16 renewables in general, but never considered a qualitative advantage to renewable projects in
17 disadvantaged communities like Oxnard.⁴⁷

18 SCE has experience seeking renewable resources in specific locations. For example, SCE
19 is running a “Preferred Resources Pilot”, targeting procurement of renewable energy in a
20 particular geographical area in Orange County.⁴⁸ SCE witness Bryson testified that “[t]he
21 preferred resources pilot RFO is an attempt to add eligible renewable resources to a certain area
22 within Orange County served by Johanna to Santiago Substations[.]” While CEJA does not
23 argue that SCE was required to run a separate RFO for renewable generation in environmental
24 justice communities in the Moorpark sub-area, SCE could and should have provided a qualitative

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26 ⁴² Evidentiary Hearing Transcript, vol. 1 (redacted) p.39.

⁴³ Cal. Pub. Util. Code § 399.13(a)(7).

⁴⁴ Exhibit SCE-1 (Bryson direct written testimony), p.15.

⁴⁵ Evidentiary Hearing Transcript, vol. 1 (redacted) p. 151 (question posed to witness.)

⁴⁶ Evidentiary Hearing Transcript, vol. 1 (redacted) p. 151 (question posed to witness.)

⁴⁷ *Id.* at 40.

⁴⁸ Evidentiary Hearing Transcript, vol. 1 (redacted); p.133; *see also* Exhibit CO-6.

1 premium to preferred resource in Oxnard. SCE was not at liberty to disregard that mandate, and,
2 at a bare minimum, was required to “express a preference” for preferred resources in Oxnard.

3 **B. SCE’s Selected Contracts with NRG Are Not Reasonable Means to Meet the**
4 **215 to 290 MW of Need in the Moorpark Sub-area, and Should Be Rejected.**

5 The Commission’s findings “must be [supported by] substantial evidence[.]”⁴⁹ Hearsay
6 “is not competent evidence to that end[.]”⁵⁰ nor are “mere assertions in comments and
7 argument.”⁵¹ “[U]ncorroborated hearsay cannot constitute substantial evidence to support an
8 agency’s decision[.]”⁵² The Commission adheres to this rule providing that hearsay evidence
9 “cannot be the basis for an evidentiary finding without corroboration where the truth of the out-
10 of-court statements is at issue.”⁵³ “Hearsay is defined as ‘evidence of a statement that was made
11 other than by a witness while testifying at the hearing and that is offered to prove the truth of the
12 matter stated’”⁵⁴ “Documentary evidence that is introduced for the purpose of proving the matter
13 stated in the writing is hearsay per se because the document is not a statement by a person
14 testifying at the hearing.”⁵⁵

15 SCE determined that the qualitative and quantitative criteria evaluated in its selection of
16 offers rendered NRG’s 262 MW (“Oxnard Peaker”) and Ellwood ES/54 MW Refurbishment the
17 Least-Cost, Best Fit contracts to meet the capacity need it was ordered to procure in the
18 Moorpark Subarea.⁵⁶ SCE states that it “entered into [the Oxnard and Ellwood] agreements
19 because of [1] their low-cost and [2] concerns with reliability if the peakers retired.”⁵⁷ SCE’s
20 determinations about the qualitative and quantitative merits of the NRG contracts, however, rest
21 primarily on improper and unsubstantiated assertions regarding the purported risk of resource

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23 ⁴⁹ *Util. Reform Network v. Pub. Utilities Comm’n*, 223 Cal.App.4th 945, 960 (2014) (internal quotation marks &
citation omitted).

24 ⁵⁰ *Id.*

⁵¹ *In Re Pac. Gas & Elec. Co.*, D.00-10-002, 2001 WL 1131831 (July 12, 2001).

⁵² *Util. Reform Network*, 223 Cal.App.4th at 962.

25 ⁵³ *Id.* at 961 (internal quotation marks & citation omitted).

⁵⁴ *Re Pac. Gas & Elec. Co.*, 23 CPUC 2d 352, 5, D.86-12-101 (Dec. 22, 1986).

⁵⁵ *Id.* at 7.

26 ⁵⁶ SCE “consider[ed] both the quantitative and qualitative aspects of the selections before finalizing its
27 recommendations[.]” Ex. SCE-1C, SCE Opening Test., Singh, at 44:6-7, and “selected NRG Energy Center Oxnard
28 LLC’s . . . offer . . . for a new GE 7HA.01 gas-fired CT” *id.* at 55:16-17 and “[t]he Ellwood battery storage project[,]
which] was offered as a mutually inclusive package with the Ellwood refurbishment and the Oxnard Energy
Center[.]” *id.* at 54:17-19.

⁵⁷ See Ex. SCE-1C, SCE’s Opening Test., Bryson, at 57:20.

1 shortage due to the supposed *possible* retirement of the Mandalay and Ellwood peakers absent
2 the awarded NRG contracts.

3 SCE expresses concern throughout its Application that if it did not award the new Oxnard
4 Peaker and Ellwood Refurbishment contracts to NRG, the existing 130 MW Mandalay peaker
5 and 54 MW Ellwood peaker might be retired, thus creating further reliability risks that would
6 require future procurement of an additional 184 MW.⁵⁸ Indeed, its decisive actions resulting in
7 the selection of NRG's offers turned on SCE's concerns about safeguarding the 184 MW
8 existing resources from retirement, which are grounded solely on hearsay and uncorroborated
9 evidence. Hearsay and uncorroborated evidence, cannot, of course, form the basis of the
10 Commission's findings in this proceeding, and must therefore be disregarded. Casting aside
11 SCE's unsubstantiated grounds for its purported reliability risk concerns, SCE's Application is
12 rendered hollow, and the NRG contracts untenable.

13 1. There is no substantial evidence to support a finding that the "key" qualitative
14 consideration in the RFO process favored the NRG contracts based on the purported
15 possible retirement of the Mandalay and Ellwood peakers.

16 There is no substantial evidence in the record to support SCE's heavy reliance on its
17 specious concern that NRG may retire the existing Mandalay and Ellwood peakers absent the
18 contract at issue, and the qualitative high marks it accorded NRG's offers on that basis.

19 SCE submits that it "considered qualitative characteristics in determining the final
20 selection [of contracts,]"⁵⁹ and that [begin confidential]

21 [end confidential].
22

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24 ⁵⁸ See Ex. SCE-2C, SCE's Opening Test., I.E. Report, App. D, at D-69 (public) ("If Mandalay 3 were to be retired,
25 that facility's capacity would add to SCE's Moorpark capacity needs and [ex]acerbate the reliability problems that
26 SCE is trying to address in the Moorpark sub-area.") (emphasis added); *id.* ("If the refurbishment were not pursued
27 and the CT were retired, it would ultimately add another 54 MW to SCE's future Moorpark capacity needs.")
(emphasis added); Ex. SCE-1, Opening Test., Singh at 43:14-17, 46:18-21 ("[I]t is *likely* that the existing Ellwood
28 peaker will retire if it is not refurbished, thus resulting in the need to develop additional capacity in the Moorpark
sub-area beyond SCE's current Track 1 LCR process.") (emphasis added); SCE Conf. Hearing Trans., Bryson, Vol.
1, at 178:6-26 ("[SCE] had a concern that NRG *might* retire the peaker[,] [resulting in] additional need in the Goleta
area . . . [a]nd, thus, we would have to do additional procurement to replace the peaker.") (emphasis added); Ex.
SCE-7, SCE Rebuttal Test. at 7:1-2 (reliability risks "[i]f SCE waited for NRG to retire Ellwood instead of
contracting to refurbish the plant").

⁵⁹ Ex. SCE-1, Opening. Test., Singh at 39:8-9.

1 “SCE [also] entered into [NRG’s refurbishment] agreement because of . . . concerns with
2 reliability in the Goleta area if the [Ellwood] peaker is retired.”⁶⁰ The record is replete with
3 references that SCE was concerned that “the possible retirement of both the Goleta and
4 Mandalay peakers would add up to 184 megawatts”⁶¹ and exacerbate reliability problems,⁶² and
5 that maintaining the peakers operational is a qualitative benefit. SCE’s witness summed up the
6 qualitative grounds upon which it granted NRG the two gas-fired generation contracts: [*begin*
7 *confidential*]

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9
10 [*End confidential*].⁶³

11 The key to the qualitative benefit of “maintaining those resources” operational and
12 increasing reliability in the subarea lies with NRG’s Oxnard facility, since the Ellwood facility is
13 unstaffed and operated remotely from the Oxnard Generation Station.⁶⁴ Accordingly, NRG’s
14 retirement of the Mandalay 130 MW peaker would be the Ellwood peaker’s kill-switch. As
15 NRG communicated to SCE, [*begin confidential*]
16 [*end confidential*]. SCE deemed the Ellwood peaker “necessary to maintain system reliability in
17 the Moorpark LCR area,”⁶⁵ but considered it dependent on the Mandalay facility SCE was
18 concerned would retire. NRG explained to SCE that a benefit of its Oxnard contract was that
19 [*begin confidential*]

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21
22 [*end confidential*]. According to SCE, the NRG Oxnard contract settled its concerns and offered
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24 ⁶⁰ Ex. SCE-1, Opening Testimony, Bryson at 57:18-20.

25 ⁶¹ SCE, Bryson Hr’g Tr., Vol. 1, at 179:3-24.

26 ⁶² See *id.*, *supra* n. 10.

27 ⁶³ SCE Bryson Confid. Tr., Vol. 1, at 179:3-24 & 179:23-28 (emphasis added). See also [*begin confidential*
28 [*end confidential*].

29 ⁶⁴ <http://www.cpuc.ca.gov/Environment/info/esa/divest-edison/chapters/chap2.htm> at n. 4. (“Ellwood, is a smaller
30 peaker facility that is unstaffed and operated remotely from Mandalay Generation Station[.]”); SCE Op. T., App. D
31 at D-21 [*begin confidential*]

32 [*end confidential*].

33 ⁶⁵ Ex. SCE-7, SCE Rebuttal Test., Cushnie at 6:7-11.

1 a critical qualitative benefit because it would ensure the continuing operation of both the 130
2 MW Mandalay and 54 MW Ellwood peakers.

3 Certainly, no reasonable person would conduct serious business and governmental affairs
4 based on conjecture, speculation, or unfounded fears. The reasonableness of SCE's concerns and
5 assigned qualitative benefits to the NRG contracts can be determined only by judging the
6 legitimacy of the underlying grounds for those concerns. The evidence in the record shows that
7 SCE's stated concerns are baseless. It was therefore unreasonable to assign the NRG Oxnard
8 and Ellwood contracts key qualitative benefits, which cannot withstand scrutiny. Without
9 substantial evidence, the Commission cannot make a finding supporting SCE's qualitative
10 assessment of the NRG contracts before it.

11 **a. The Commission has never recognized capacity reliability**
12 **concerns in the Moorpark Subarea due to NRG's possible**
13 **retirement of its 130 MW Mandalay and 54 MW Ellwood**
14 **peakers.**

15 The Commission's Track 1 decision authorized SCE to procure between 215 and 290
16 MW based on determination that OTC generators would retire due to new state requirements.⁶⁶
17 As to the Moorpark Subarea, the commission recognized that NRG's retirement of its four Once
18 Through Cooling ("OTC") units in Oxnard required procurement of additional generation
19 capacity.⁶⁷ While NRG participated in the Commission's proceedings leading to the Track 1
20 decision, it never indicated that it would likely retire its remaining GFG peaker in Oxnard
21 (Mandalay 3) or the Ellwood peaker. Nothing in the Track 1 decision indicates that the
22 Commission had reason to believe that NRG would retire the peakers upon retiring the OTC
23 units if it could not add to its Moorpark Subarea GHG business portfolio.⁶⁸ Rather, as SCE must
24 recognize, the Commission assumed that both of NRG's peakers would continue to operate,⁶⁹
25 and the authority to procure was based only on the retirement of the OTC units.

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27 ⁶⁶ D.13-02-15 at 2.

⁶⁷ *Id.* at 9, 68.

⁶⁸ *See, generally*, D.13-03-015.

28 ⁶⁹ Ex SCE-7, SCE's Rebuttal Test., Cushnie at 6, 9-12.

1 SCE's determination that the Mandalay 3 and Ellwood peakers may retire and add
2 another 184 MW of need, absent the NRG the GFG contracts at bar, grossly undermines the need
3 determination in the Track 1 Decision. Nothing in that decision permits SCE to disregard the
4 Commission's findings and directives. The Decision instead unequivocally states that the
5 Commission "will evaluate whether there are additional LCR needs for local reliability areas in
6 California" "[i]n the next long-term procurement proceeding[.]"⁷⁰ The Commission limited
7 SCE's "authoriz[ation] or require[ment] to contract for local reliability needs over the next
8 several years[] to the extent that the Commission finds there is such a need."⁷¹

9 **b. SCE's top ranking of the NRG offers' qualitative value is**
10 **based on hearsay and uncorroborated evidence, and precludes**
11 **a finding that the RFO results are reasonable.**

12 The concern that NRG may retire the Mandalay and Ellwood peakers and the
13 consequential reliability risks are based entirely on uncorroborated hearsay evidence, and cannot
14 form the basis of the Commission's ruling.

15 **i. There is no evidence in the record to support a finding or**
16 **determination that NRG may retire the Mandalay and Ellwood**
17 **peakers or that the qualitative rankings are reasonable.**

18 **(a) There is no substantial evidence that NRG may retire the**
19 **Mandalay peaker.**

20 SCE admits that its concern that the Mandalay peaker may retire is based entirely on the
21 grounds that [*begin confidential*]

22 [*end confidential*]. This evidence is hearsay, and cannot be relied on for the
23 truth of the matter in the absence of adequate foundation or corroborating evidence. SCE also
24 presents documentary evidence written by the independent evaluator of the RFO process, which
25 constitutes double hearsay,⁷² stating that [*begin confidential*]

26 ⁷⁰ D13-02-015 at 3.

27 ⁷¹ *Id.* at 6.

28 ⁷² This documentary evidence may not be relied on to prove the truth of the possible retirement of the Mandalay or Ellwood peakers, because it is an out of court statement, and its author was not presented for cross-examination. *Util. Reform Network v. Pub. Utilities Comm'n*, 223 Cal.App.4th 945, 949 (2014) ("PG&E's evidence of claimed need for procurement [based on] a declaration [and petition] from . . . CAISO . . . could not be used [to] evidence [] the need of . . . the [] Project" "[b]ecause of their hearsay nature[.]").

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3
4 [end confidential].

5 SCE's witness testified that SCE [begin confidential]
6 [end confidential]. SCE's concern of the possible peaker retirement was based only on
7 [begin confidential]
8 [end confidential].⁷³

9 The only references in the record concerning the possible retirement of the Mandalay 3
10 peaker are based on uncorroborated hearsay, and thus cannot be relied on to establish the truth of
11 the matter.

12 (b) There is no substantial evidence that NRG may retire the
13 *Ellwood* peaker.

14 The record also shows that SCE's concern that the Ellwood peaker may retire is based
15 entirely on hearsay and other unsubstantiated grounds. Accordingly, there is no evidence
16 substantiating the qualitative ranking assigned to the Ellwood Refurbishment project.

17 SCE's witness testified that [begin confidential]

18
19
20 [end confidential]. Its witness testified that SCE "did [not do] any analysis where [it]
21 concluded that the unit would retire[,] [begin confidential]

22
23 [end confidential]. This hearsay evidence cannot establish that the Ellwood peaker is at
24 risk of retiring.

25 SCE maintains that its concern about the reliability of the Ellwood peaker was also based
26 on its own observations that the plant is an "older resource" that has not been very reliable in
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⁷³ *Id.* at 182:16-22.

1
2 meeting local capacity needs.⁷⁴ SCE states that “[t]he Ellwood refurbishment [is necessary
3 because it is a] . . . GFG facility that is close to the end of its useful life[.]”⁷⁵ However, absent
4 any other corroborating evidence, these “mere assertions in comments and argument” do not
5 qualify as evidence.⁷⁶ There is simply no evidence in the record to substantiate SCE’s assertions
6 regarding the purported faulty nature of the Ellwood peaker. In response to CEJA’s data
7 requests, SCE stated that [*begin confidential*]

8 [*end confidential*], but yet SCE has no
9 recorded evidence, including emails or meeting notes, showing that during the entirety of 2014,
10 the RFO year, that it considered, discussed, or even reviewed the unreliability of the Ellwood
11 peaker.⁷⁷

12 SCE’s assertions and evidence regarding its reliability concerns regarding the NRG
13 peaker retirements amount to uncorroborated hearsay that cannot be used for the purpose of
14 proving the truth of their possible retirement or system reliability need. Indeed, the court in *Util.*
15 *Reform Network* squarely held that the Commission may not base a finding or determination
16 about reliability need on such uncorroborated evidence.⁷⁸ In that underlying proceeding, the
17 Commission reviewed declaratory evidence asserting that a power plant project was necessary
18 because “there [would] be a shortage or gap of [resources] for meeting system-wide capacity
19 needs[, which] . . . would pose significant challenges to the reliable operation of the [] grid.”⁷⁹
20 The witness stated that there was a “concern[] about the problem[.]”⁸⁰ The court rejected that
21 hearsay evidence as a basis for the Commission’s finding of capacity need, and determined that
22 the record was devoid of “other competent, substantial evidence to support the Commission’s
23 decision.”⁸¹ Based on the record in this proceeding, the same result is required here.

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25 ⁷⁴ *Id.*, at 182:23-183:14.

26 ⁷⁵ Ex. SCE-7, Cushnie, Rebut. Test. at 6:9-10.

27 ⁷⁶ *In Re Pac. Gas & Elec. Co.*, No. 00-10-002, 2001 WL 1131831 (July 12, 2001).

28 ⁷⁷ Ex. CEJA-2, Data Req. Resp. No. 15 at 3.

⁷⁸ 223 Cal.App.4th at 952.

⁷⁹ *Id.*, at 952.

⁸⁰ *Id.*, at 952.

⁸¹ *Id.*, at 962-66.

1
2 The Commission cannot approve SCE's NRG contracts based on the purported concerns
3 or assertions that the Mandalay or Ellwood peakers may retire, because they constitute
4 uncorroborated hearsay. Accordingly, there is no substantial evidence upon which to issue a
5 finding or determination supporting a qualitative benefit of the NRG Oxnard contract as assigned
6 by SCE in its RFO process.

- 7 ii. There is no evidence to support a finding that SCE acted reasonably in
8 assigning NRG's offers key qualitative value based on its fear that NRG
9 may retire the Mandalay and Ellwood peakers.

10 There is no substantial evidence in the record to support a finding or determination that
11 SCE reasonably concluded that NRG will retire its Mandalay and Ellwood peakers and that the
12 awarded contracts carry the key qualitative value, where SCE's conclusion is based only on
13 [begin confidential] [end confidential]. It is irrational for a highly sophisticated organization like
14 SCE, the largest subsidiary of Edison International, to take [begin confidential]

15 [end confidential] form a fear about the potential or "possible retirement of both . . .
16 peakers,"⁸² and assign the key qualitative value to NRG's project offers based on that fear alone,
17 without making any effort to assess or verify that possibility. It further defies all logic for SCE to
18 determine reliability needs or offer valuations based on the unsubstantiated [begin confidential]

19
20 [end confidential]
21

22 In order for the Commission to determine whether SCE's belief that NRG would retire
23 the peakers, and if the assigned qualitative value to NRG's contracts are reasonable, it needs to
24 find that "the evidence [upon which it relies] is at least the sort on which responsible persons are
25 accustomed to rely in the conduct of serious affairs."⁸³ As the court in *Utility Reform Network v.*
26

27
28 ⁸² SCE, Bryson Confid. Hr'g Tr., Vol. 1 at 179:3-22; *see supra*, n. 10.

⁸³ *Re Pac. Gas & Elec. Co.*, 23 CPUC 2d 352 (Dec. 22, 1986).

1 *Public Utilities Commission* explained, unsubstantiated “fears [that] reliability needs may occur”
2 based on uncorroborated possibilities cannot meet this standard.⁸⁴

3 In sum, a finding or determination cannot be made that SCE acted reasonably in valuing
4 NRG’s offers with the highest qualitative ranking.

5 [begin confidential]
6
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8

9 [end confidential]

10 “SCE calculated the quantitative benefits of offers by subtracting the present value of
11 expected costs from the present value of expected benefits to determine the expected [Net
12 Present Value (“NPV”)] of the offer.”⁸⁵ This is referred to as the “Least-Cost, Best Fit
13 methodology [used] to value and award contracts in the LCR RFO.”⁸⁶ This process was
14 compromised for the GFG offers because SCE gave undue weight to the unsubstantiated
15 concerns that NRG may retire the Mandalay and Ellwood peakers in assessing their “value of
16 expected costs [and] . . . benefits.” [begin Confidential]
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24 [end confidential]
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27 ⁸⁴ 223 Cal.App.4th 945, 965 (2014).

⁸⁵ Ex. SCE-1, SCE Opening Test., Singh at 39:2-4.

⁸⁶ *Id.*, at 30:4-5.

1 Pursuant to D.04-12-048 and D.08-11-008, utilities consider “the cost associated with the
2 effect debt equivalence” “in their valuation processes.”⁸⁷ SCE indicates that “[t]he LCR RFO
3 presented a number of new and unique challenges, including . . . debt equivalence issues.”⁸⁸ The
4 existence of debt equivalence complications were “the most significant issue that arose during
5 the RFO and that caused a series of . . . delays[.]”⁸⁹

6 “When performing its preliminary assessment of the contracts, SCE determined that its
7 then-current form of GFG . . . contracts would result in . . . an unacceptable level of debt
8 equivalents.”⁹⁰ “In order to minimize the debt equivalency issue, SCE . . . change[d] the
9 structure of the contracts [by] . . . convert[ing] impacted GFG contracts for combustion turbines
10 (“CTs”) to fixed-price per unit RA-only contracts.”⁹¹ According to SCE, “[t]he accounting
11 assessment for the *restructured* contract resulted in accrual accounting treatment and thus
12 reduced the debt equivalence impact.”⁹²

13 [*begin confidential*]

25 ⁸⁷ Ex. SCE-1, SCE Opening Test., Singh at 37:22-24. “Debt equivalents is the term used by credit rating agencies to
26 describe the fixed financial obligation resulting from long-term contracts[.]” *Id.* at 37:19-20. “The overall effect of
debt equivalence . . . could result in a downgrade of SCE’s credit rating at some future date [which could be] . . .
harmful to SCE, its suppliers and its customers[.]” Ex. SCE-1, SCE Opening Test., Bryson at 24:1-5

27 ⁸⁸ Ex. SCE-1, SCE Opening Test. at 1:14-16.

28 ⁸⁹ Ex. SCE-2C, Indep. Eval. Report, App. D at D-21.

⁹⁰ Ex. SCE-1, SCE Opening Test., Bryson at 24:20-25:1-3.

⁹¹ *Id.*, at 25:4-7.

⁹² *Id.*, at 25:19-20 (emphasis added).

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12 *[end confidential]*

13 **C. The Commission Should Not Consider the Contract or The NRG Oxnard**
14 **Plant Before the CEC Completes Review Under CEQA.**

15 As a responsible agency, the Commission should stay its decision in this proceeding until
16 an environmental review has been completed by the CEC, the lead agency. The CEC's analysis
17 under the California Environmental Quality Act ("CEQA") will explore certain facts that are
18 relevant to the PUC's analysis of the contract, and state law requires a responsible agency to rely
19 on the environmental review conducted by the lead agency. In contrast, an untimely decision on
20 the contract could interfere with the CEC's CEQA analysis and the availability of the alternatives
21 that it is mandated to explore under CEQA.

22 The Commission must consider the contracts in this application independently of the
23 CEC, but that analysis should occur after completion of CEC review. The Commission's
24 authority, obligations and analyses are different from the CEC's. Even in its review under
25 CEQA, the CEC will not consider whether SCE met its procurement requirements to prioritize
26 benefits of renewables and give weight to environmental justice. There is, however, some
27 overlap between the review the two agencies will conduct, and the CEQA review will
28 meaningfully inform the Commission's analysis of the contract.

1 The CEC is the lead agency for purposes of the CEQA review for the 262 MW NRG gas
2 plant proposed for Oxnard

3 The Commission should not act on the contract for the NRG gas-fired power plant until
4 after the CEC makes a determination on its CEQA review.⁹³ Under CEQA, the CEC has
5 exclusive state law permitting authority for thermal power plants over 50 MW, and under its
6 certified regulatory program, is the “lead” agency for CEQA review of such power plants.⁹⁴
7 Agencies that are not the lead agency, but have discretionary approvals over aspects of a thermal
8 power plant under CEC review, are “responsible” agencies.⁹⁵ As it has discretionary approval
9 over the contract, the PUC is the responsible agency. Responsible agencies rely on the
10 environmental analysis of the lead agency with a certified program.⁹⁶

11 During CEQA analysis, the CEC will develop a record regarding some of the factors SCE
12 should have considered in its procurement plan and its procurement process, including
13 environmental justice factors. The CEC has “integrate[d] environmental justice into its siting
14 process since 1995, as part of its thorough California Environmental Quality Act (CEQA)
15 analysis of applications for siting power plants and related facilities.”⁹⁷ The Energy
16 Commission’s final decision in its CEQA review may include consideration of its “[s]taff[’s] . . .
17 analy[ses] [of] . . . disproportionate impacts on minority and low-income populations resulting
18 from exposure to direct and cumulative impacts associated with the proposed facility.”⁹⁸ The
19 CEC’s “analy[ses] [include] the existing socioeconomic setting of the area and evaluates the
20 project in terms of population and demographic characteristics, economic base[,] and
21 employment data[.]”⁹⁹ The facts the CEC explores in its certification process may prove helpful
22 to the Commission in its analysis of the proposed contract and can augment the Commission’s
23

24 ⁹³ Cal. Code Regs., tit. 14, § 15253, subds. (a)-(b)(1); *see also City of Morgan Hill v. BAAQMD*, 118 Cal.App.4th
25 861, 875 (2004).

26 ⁹⁴ Cal. Code Regs., tit. 14, § 15251.

27 ⁹⁵ Cal. Pub. Res. Code § 21069;

28 ⁹⁶ *See* Cal. Code Regs., tit. 14, § 15253, subds. (a)-(b)(1).

⁹⁷ *See* CEC website at http://www.energy.ca.gov/public_adviser/environmental_justice_faq.html.

⁹⁸ California Energy Commission, Energy Facility Licensing Process: Developers Guide of Practices and Procedures
Staff Report / Draft, December 7, 2000, at 30, available at: http://www.energy.ca.gov/siting/documents/2000-12-07_700-00-007.PDF.

⁹⁹ *Id.*

1 inquiry, which must extend beyond CEQA considerations.

2 Although it is appropriate for the Commission to defer consideration of the NRG Oxnard
3 gas-fired plant, the Commission should not expect that the CEC's CEQA process will address all
4 the facts germane to the questions it must decide. For example, in determining whether the
5 procurement contract that locates the proposed plant in a disadvantaged community makes
6 complies with the utility's procurement authorization, the Commission will consider information
7 about the disadvantaged community and the impact of the power plant on the community. It will
8 also consider whether the utility looked at that information, and appropriately weighed it. As
9 NRG's witness admitted, the CEC will not evaluate SCE's behavior; its procurement plan, the
10 conduct of its RFO, its bid evaluation process.¹⁰⁰ Still, these analyses will benefit from a
11 completed CEQA review, including the information the CEC will gather about the
12 socioeconomic and environmental surroundings of the plant.

13 Further, as part of its CEQA mandate, the CEC must consider alternatives to the project,
14 taking into account the economic feasibility of any proposed alternatives.¹⁰¹ To the extent that
15 less-harmful alternatives are not feasible, the CEC must impose mitigation to reduce all
16 significant impacts.¹⁰² However, the untimely approval of the contract might foreclose
17 alternatives that are currently available. NRG and SCE have structured the contract to render
18 denial of this project impossible once the Commission approves it. As NRG witness Gleiter
19 testified, once the contract is approved by the Commission, failure to secure CEC approval
20 exposes NRG to approximately \$24 million in penalties.¹⁰³ The contract terms dictate delivery
21 date and megawatt value of the resource, as well as location and resource type. Prior to approval
22 of the contract, were the CEC to determine that a smaller resource would be an alternative NRG
23 must consider, the CEC would simply be presented with the statement from NRG that it wanted

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25 ¹⁰⁰ SCE, Gleiter, Hr'g Tr. Vol. 2, at 330-31.

26 ¹⁰¹ CEQA requires that an EIR describe a range of reasonable alternatives to the project that would feasibly attain
27 most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of
28 the project, and evaluate the comparative merits of the alternatives. Cal. Pub. Res. Code §§ 21100(b)(4), 21002;
CEQA Guidelines § 15126.6(c).

¹⁰² Government agencies "shall mitigate or avoid the significant effects on the environment." Cal. Pub. Res. Code §
21002.1(b).

¹⁰³ SCE, Gleiter, Hr'g Tr. Vol. 2, at 336-37.

1 a resource of a specific magnitude. After contract approval, NRG could state that it wants a
2 resource of such a magnitude, and if the CEC does not approve this resource, NRG would be
3 subject to \$24 million penalties. Requiring a different project, in addition to the cost of the
4 penalty, would render any alternative infeasible.

5 Approval of the contract for the NRG gas-fired powerplant prior to a final CEC at best
6 forecloses some options that are currently feasible, and at worst, deprives environmental justice
7 communities of the protections promised by the legislature and the Commission.

8 **D. The Contract for NRG Oxnard Does Not Make Electrical Service Safer and**
9 **More Reliable; The Ellwood Refurbishment Project Is Not Appropriate for**
10 **Consideration in This Proceeding, and if it Were, the Contract is Not Reasonable.**

11 CEJA has collaborated with the City of Oxnard and Sierra Club in this proceeding. We
12 concur in their analyses that climate impacts and climate change make the NRG Oxnard proposal
13 risky and jeopardize the reliability of service. Further, addition of a pollution source to
14 contribute more particulate matter, where residents and workers in Oxnard already breathe
15 cumulative air emissions from existing sources, makes the local system less safe for Oxnard
16 ratepayers.

17 As strongly explained by Sierra Club and other parties, the 54 MW Ellwood Refurbishment
18 project is not appropriate for the Commission to consider in this proceeding. If it were, the
19 contract is not reasonable, for the reasons described in section B, supra.

20 **IV. CONCLUSION**

21 For these reasons, CEJA respectfully requests the Commission deny the application.

22 DATED: July 22, 2015

COMMUNITIES FOR A BETTER
ENVIRONMENT

24 By: /s/ Shana Lazerow

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